

**IDAHO PESTICIDE MANAGEMENT PLAN**  
**RULE MAKING COMMITTEE**  
**Minutes of December 16, 2003 Meeting**  
**Idaho State Department of Agriculture**

Gary Bahr called the meeting to order at 9:10 am.

Members of the Committee in attendance included:

Gary Bahr, Idaho State Department of Agriculture  
Tom Turco, Central District Health Department  
Garrett Wright, EPA Region X  
Elke Shaw-Tulloch, Idaho Department of Health and Welfare  
Scott McKinnie, Far West Agribusiness Association  
Keith Esplin, Potato Growers of Idaho  
Gayle Batt, Idaho Water Users Association  
Ken Neely, Idaho Department of Water Resources  
Rick Carlson, Idaho State Department of Agriculture  
Craig Tesch, Idaho State Department of Agriculture  
Cathy Parsons, Idaho State Department of Agriculture

Gary noted that minutes of the previous meetings have been posted to the website. A revised meeting schedule will be developed and posted to the website also.

Some new members attended the meeting. Gary provided and discussed the proposed **timetable** for the development of the draft rules. The goal is to get the draft rule put together by June 2004. Gary noted that there is no mandate to have rules completed by a certain date, therefore, the timeline can be extended to a year if needed. Gary discussed the timetable for developing the language that will make up the sections of the draft rules. This timetable includes a goal of presenting as much or all of the draft language to the committee at the December 16<sup>th</sup>, and January meetings. Gary has proposed that these rules be developed for adoption by the 2005 Legislature. EPA has not mandated that rules be developed to implement the Pesticide Management Plans. The majority of states have generic state plans. Several states have developed state PMP rules.

Rick Carlson reported on **ISDA Regional Pesticide Findings (2001-2003)** that will be published when it has been finalized. The report shows the number of wells that were tested by year, having one or more pesticide detections, and percentages. The report includes the common and brand names of pesticides, number of sites with positive detections, percentage of sites tested with positive hits, the reference point, and numbers above 20%, 50%, or 100% of the reference point. The report focuses on ISDA regional projects around the state. The majority of detections have been Atrazine. The majority of detections over the 20% of a reference point have been Dacthal.

They do try to test each well every other year, and if there is a detection ISDA does go back and retest the well the next year. All of the detections are for herbicides except for a very few. The lab tests for 130 products using EPA's 500 analytical method series. They do look at vulnerability vs. hits and they would like to develop an overlay to see where the hits are compared to the vulnerability mapping products.

Gary reviewed the information presented by Catherine Eiden (EPA, Branch Chief of the Reregistration Branch 3 in the Health Effects Division of the Office of Pesticide Programs) during the December 4<sup>th</sup> Technical Committee Meeting, and noted that the slide show is available through the website. They will be using reference points such as MCLs first, if they are not available, they would use HALs, and those are not available, they would use RfDs. Elke asked if Minimum Risk Levels (MRLs) would be used. They are used for hazardous waste. Gary mentioned that he would look into the use of MRLs. Gary stated that MCLs are legally enforceable for drinking water, they are based on chronic exposure, and that is standard by which EPA judges protection efforts.

In response to questions from Gayle Batt, it was noted that the EPA has not yet adopted a final rule but would like to give the state the flexibility to address problems at the state level. However, EPA would have to have the ability to address a problem if the state does not. EPA would decide if the state plan has failed. One detection would not mean that the plan failed. And, pulling a use from a pesticide would have to be a public process. The state rule would have mechanisms written into it to address reducing contamination levels, etc. without EPA taking away the use. However, if the state does not have a plan in place, EPA could take primary action.

Gary provided copies of the beginning sections of the proposed rule and stated that the language presented in the Legal Authority, Title, Written Interpretations, and Administrative Appeal sections are fairly standard. He will double check with the Deputy Attorney General to ensure that the legal authority citation is correct and provide the response at the next meeting. He stated that, at the last meeting, the Committee determined to develop a stand-alone rule.

**Scope.** It was asked if records under the scope section and draft PMP rule would include pesticide use reporting. Pesticide use reporting could be used when a pesticide is found between 50% and < 100% of the Reference Point. At this stage, the pesticide of concern would theoretically be a Restricted Use Product (RUP), due to ISDA creating a Chemical Specific Management Plan for that pesticide. Legal authority is provided in the Idaho Pesticide and Chemigation law to require record keeping. Currently there are no state pesticide rules to collect the data. ISDA does implement a USDA Grant to check records that are required to be kept under the USDA record keeping rules; associated with the use of Restricted Use Products (RUPs). Under the PMP process, ISDA would want to collect records at localized levels, and only if necessary. This would assist in determining use, location, rate, and crops where applications are taking place; in areas of increased contamination of ground water. To provide for statewide collection of data would require a lengthy process, unless we can go to an emergency rule. Statewide type data

collections would be onerous for ISDA and the applicator/dealer community. This would be public information only for an “area of concern.” Gary read the information contained in the EPA PMP Guidelines. Scott McKinney suggested that this be carefully written so that these kinds of records would be exempt from the public records act.

There were some questions about the statement, “groundwater quality and human health”; if it would be understood that human health is a primary concern and if this would be adequately explained. Protection of ground water quality to drinking water standards inherently implies protection of human health.

Gary noted that the EPA draft PMP rule (June, 1996) is largely geared toward protection of ground water and interconnected surface water. If impacted ground water discharges into and impacts surface water, the EPA would like the states to respond and protect the vulnerable surface water as well. It was noted Gayle Batt, that in Idaho that pesticide contaminated surface water could actually impact more pristine ground water. Gayle asked if we were going to build that concept into the rule, or include all of the surface water concerns. Gary responded by saying that we currently have authority under FIFRA to respond to pesticide complaints with enforcement actions, including surface water. Gary also said that we can develop language that allows us to pay attention to interconnected surface water issues; however the Draft PMP Rule shall be focused on ground water. EPA’s goal is to protect groundwater and interconnected surface water. Garrett Wright (EPA) stated that EPA headquarters are working to develop a surface water focused program possibly with rules. They have not proposed anything yet. Some states do include surface water issues into their PMPs. In Idaho, aquifer recharge could become an issue.

**Policy Section:** Gary stated that most of the Policy Section was derived from existing groundwater law, rule, and plans.

04. Nutrients. Committee members questioned since nutrients are not addressed in the scope, if they should not be included in this subsection and stated that the definitions would also have to be changed if nutrients remain. Gary stated staff would continue to review other documents to make sure all appropriate references are included. Committee members suggested that this be changed so that only pesticides are addressed, however, the section cannot be rewritten because it has already been approved by the Legislature in other documents. It does not address residential or non-crop use of pesticides.

**Definitions:** The proposed definitions have been compiled from a variety of sources including the Idaho Pesticide and Chemigation Use and Application Rules, the Idaho Groundwater Rules, etc. Gary stated that these definitions would need to be reviewed against each Section and subsection to ensure all necessary language was defined adequately. Scott McKinney requested that the source of each definition be provided. The groundwater rule definitions have been carefully thought out, reviewed, and agreed upon, therefore, they will have to remain consistent throughout, or determine if they are still pertinent to this rule.

Tom Turco asked if EPA would be able to override Idaho's draft rule. Garret stated that Idaho has primacy and EPA would focus on the Pesticide Management Plan. The rules will implement the Plan. Right now under the chemical specific plan, Idaho doesn't have to have a monitoring plan in order to have it approved. You would have to have a schedule on when you plan to implement the monitoring.

Committee members requested that the definitions be condensed to only include pesticide references.

**Response to a Pesticide Detection:** Gary stated that there are four levels of proposed response with each level adding steps to the previous levels. He explained that the response chart is contained in the generic State Pesticide Plan.

In response to a question on how wells are chosen for inclusion in regional projects, Rick and Gary explained that they are chosen randomly. Results are mailed to each well owner and results compiled into reports (which are available on the website). A press release is sent out indicating a report has been released with very general information.

Specific comments on the Response to Detections Section:

- 1. Level One Response, a.:** Committee members stated that at Level One, notifying the general public of every detection would be burdensome for ISDA. ISDA should work to get the word out through reports, press releases, workshops, and other means. Committee members felt that notifying all the public would be very difficult. Also, the public may become alarmed with many detection notices even though they are quite low in concentration. "Notifying general public" should be struck.

**c:** In response to a question, it was noted vulnerability and geology of a site are already considered as part of the study.

**g:** Committee members asked if BMP's would be effective in keeping pesticides out of groundwater. They also requested that NRCS be included in the process and stated that cost sharing tools might be available through NRCS for remediation of a site. There might also be EPA grants and potential funding through SCC.

Gary stated that he would need to meet with NRCS to discuss the draft rules, etc. Conducting Pesticide Management Planning has not been a current focus of NRCS, but possibly could be done.

- 2. Level Two Response:** Committee members requested that the wording be revised to "When pesticide detections in an area are at 20% to less than 50% of the Reference Point, the department shall:"

- b. Develop and implement a chemical specific management plan per pesticide, unless already mandated through EPA Rule to do so.
  - e. Notify and work with appropriate parties including but not limited to producer(s) to determine source(s). Gary stated this would be a survey type of activity.
- 3. Level Three Response:** Committee members requested that the wording be revised to “When pesticide detections in an area are at 50% to less than 100% of the Reference Point, the department shall:”
- a. Implement actions 01. a-g., and 02. a-g; and, at the discretion of the Director, consider any or all of the following options:
  - e. Assist home owner with health information and alternatives ~~for attaining a safe~~ water sources. Committee members stated that an outline is needed on where to obtain “safe water.” The Department would not be required to provide safe water—only be required to provide information on where/how to obtain it.
  - f. Committee members asked about records, record keeping, and who it would affect. This needs to be explained further by adding another section on how this would be done and who would be required to keep records. It was also stated whether ISDA wanted to deal with just Restricted Use Pesticides (RUPs) or General Use Pesticides also. At what point does this get decided within the rule language. Currently ISDA works to implement the USDA record keeping rules related to records that are required for RUPs. Additional work is needed related to record keeping. Gary stated that a chemical specific plan would trigger a compound to become a RUP. Under a Chemical Specific Plan, implementation would occur over a broader area while records may be required to be kept and collected in confined areas of greatest impact. This would require applicators to report that use. This would cause additional work and burden on applicators, dealers, and ISDA. These procedures should be thought out carefully. If the pesticide would be restricted statewide, there would have to have a good reason. Committee members asked for more detail on how this could be accomplished.

The meeting adjourned at 3:00 pm.